INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	9
Conclusion	18
Appendix	19

CITATIONS

Cases:

Amalgamated Utility Workers v. *Consolidated Edison Co.*, 309 U. S. 261	12
American Scale Co., Matter of, 19 N. L. B. 124	14
Arizona-Hercules Copper Co. v. *Crenshaw*, 21 Ariz. 15, 184 Pac. 996	11
Bidwell Coal Co. v. *Davidson*, 187 Iowa 809, 174 N. W. 592	11
Burk-Waggoner Ass'n v. *Hopkins*, 269 U. S. 110	16
Cates v. *Williamson* (Mo. App.), 117 S. W. (2d) 655	18
Columbia River Packers Association, Inc. v. *Hinton*, 315 U. S. 143	14, 17
Combined Metals Reduction Co. v. *Industrial Commission*, 101 Utah 230, 116 P. (2d) 929	11
Connor Lumber and Land Co., Matter of, 11 N. L. R. B. 776	14
Consolidated Edison Co. v. *National Labor Relations Board*, 95 F. (2d) 390, affirmed on this point, 305 U. S. 197	12
Deep River Timber Co., Matter of, 37 N. L. R. B. 210	15, 18
D'Oench, Duhme & Co. v. *Federal Deposit Ins. Corp.*, 315 U. S. 447	16
Fleming v. *Hawkeye Pearl Button Co.*, 113 F. (2d) 52	13
Fleming v. *Palmer*, 123 F. (2d) 749	13
Helvering v. *Hallock*, 309 U. S. 106	16
Helvering v. *Stuart*, 317 U. S. 154	17
International Association of Machinists v. *National Labor Relations Board*, 311 U. S. 72	12
International Stevedoring Co. v. *Haverty*, 272 U. S. 50	11
Interstate Granite Corp., Matter of, 11 N. L. R. B. 1046	14
Kelly Co., Matter of, 34 N. L. R. B. 325	15
KMOX Broadcasting Station, Matter of, 10 N. L. R. B. 479	14
Lehigh Valley Coal Co. v. *Yensavage*, 218 Fed. 547, certiorari denied, 235 U. S. 705	11

Cases—Continued. Page

Lyeth v. *Hoey*, 305 U. S. 188 16
Martin v. *Republic Steel Co.*, 226 Ala. 209, 146 So. 276 11
Metro-Goldwyn-Mayer Studios, Matter of, 7 N. L. R. B. 662 14
Milk Wagon Drivers' Union v. *Lake Valley Farm Products, Inc.*, 108 F. (2d) 436, reversed, 311 U. S. 91 14
Morgon v. *Commissioner of Internal Revenue*, 309 U. S. 78 16
Murphy, Harry, Matter of, 37 N. L. R. B. 487 15
National Labor Relations Board v. *Carlisle Lumber Co.*, 99 F. (2d) 533 12
National Labor Relations Board v. *Colten*, 105 F. (2d) 179 12
National Labor Relations Board v. *Waterman Steamship Corp.*, 309 U. S. 206 11
National Labor Relations Board v. *Wm. Tehel Bottling Co.*, 129 F. (2d) 250 12
National Licorice Co. v. *National Labor Relations Board*, 309 U. S. 350 12
National Tunnell & Mines Co. v. *Industrial Commission*, 99 Utah 39, 102 P. (2d) 508 11
North Whittier Heights Citrus Ass'n v. *National Labor Relations Board*, 109 F. (2d) 76, certiorari denied, 310 U. S. 632 13
Oliver Iron Co. v. *Lord*, 262 U. S. 172 11
Park Floral Co., Matter of, 19 N. L. R. B. 403 14
Phelps Dodge Corp., Matter of, 34 N. L. R. B. 846 15
Phelps Dodge Corp. v. *National Labor Relations Board*, 313 U. S. 177 12, 13
Post-Standard Co., Matter of, 34 N. L. R. B. 226 15
Pottorff v. *Fidelity Coal Mining Co.*, 86 Kan. 774, 122 Pac. 120 11
Reichelt, Edward F., et al, Matter of, 21 N. L. R. B. 263 15
Seattle Post-Intelligencer, Matter of, 9 N. L. R. B. 1262 14
South Chicago Coal & Dock Co. v. *Bassett*, 309 U. S. 251 11
Stark Co., James E., Matter of, 33 N. L. R. B. 1076 15
Sun Life Insurance Co., Matter of, 15 N. L. R. B. 817 14
Trawler Maris Stella, Inc., Matter of, 12 N. L. R. B. 415 14
Twentieth Century-Fox, Matter of, 32 N. L. R. B. 717 15
United States v. *American Trucking Assns.*, 310 U. S. 534 11
Veta Mines, Matter of, 36 N. L. R. B. 288 15
Warner v. *Goltra*, 293 U. S. 155 11
Woodruff v. *Superior Mineral Co.*, 230 Mo. App. 616, 70 S. W. (2d) 1104, certiorari quashed, 337 Mo. 718, 85 S. W. (2d) 743 11, 16, 17
Yasek, John, Matter of 37 N. L. R. B. 156 15

Statutes: Page

Missouri Workmen's Compensation Act, Sec. 3308 (a) (R. S. Mo. 1929) ---- 17, 18

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Sec. 151 *et seq.*):

Section 1 ---- 12, 19

Section 2 ---- 12, 13, 20

Section 10 ---- 16

Norris-LaGuardia Act, 47 Stat. 73, Section 13 (c) (29 U. S. C. § 113 (c)) ---- 14

Miscellaneous:

Restatement of the Law of Agency, Ch. 7 ---- 11

S. Rep. No. 573, 74th Cong., 1st Sess., p. 7 ---- 14

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 838

R. A. BLOUNT, HEARST B. BLOUNT, LONNIE FLINN AND EUNICE SIMPSON, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinions of the court below (R. 545–559) are reported in 131 F. (2d) 585. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 523–536) are reported in 37 N. L. R. B. 662.

JURISDICTION

The decree of the circuit court of appeals (R. 561–562) was entered on December 24, 1942. A petition for rehearing filed by petitioners was denied on November 27, 1942 (R. 561). The peti-

tion for a writ of certiorari was filed on March 19, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

Whether the Board properly determined that certain miners who mine on petitioners' land and certain haulers who haul the mine products are employees of petitioners within the meaning of Section 2 (3) of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra,* pp. 19–21.

STATEMENT

Petitioners, R. A. Blount, H. B. Blount, Lonnie Flinn, and Eunice Simpson, own, as tenants in common, and operate a tract of approximately 640 acres of land known as the Paw Paw Patch, in the vicinity of Richwoods, Washington County, Missouri (R. 412). The land is managed by petitioner R. A. Blount, who engages miners and haulers to extract a mineral substance known as barite or tiff from petitioners' property and to transport it to points of sale (R. 412, 413, 428A, 428B).[1]

[1] The production of tiff from the Patch in 1939 and 1940 approximated 3,800 tons in volume and $24,000 in value

On January 23, 1940 representatives of International Union of Mine, Mill and Smelter Workers, Local 113, requested petitioners to bargain collectively with the Union as the majority representative of the 79 miners and haulers engaged in the mining and transportation of barite on and from petitioners' land (R. 13–14, 18–19, 22, 24, 99, 106–114, 116–121, 130–135, 444–450). Petitioners refused to bargain on the ground that the persons for whom the Union sought to bargain were "independent contractors" and not employees of petitioners (R. 23).

Upon charges filed with the Board and after appropriate proceedings, the Board issued its findings of fact, conclusions of law and order (R. 523–539), holding that the miners and haulers are employees of petitioners within the meaning of Section 2 (2) and (3) of the Act (R. 528). The Board found that a majority of the miners and haulers had designated the Union as their representative and that petitioners had refused to bargain with the Union in violation of Section 8 (5) of the Act (R. 532). It directed petitioners to cease and desist from their unfair labor practices, to bargain collectively with the Union and to post appropriate notices (R. 535–536). This order of the Board was enforced in full by the court below (R. 545–562).

---

for each year (R. 412–413). Petitioners also operate in the same way another tract of land in Washington County (R. 96–97).

The only issue raised in this Court is the propriety of the Board's determination, which was sustained by the court below (R. 551–552), that the miners and haulers working on petitioners' land are their employees within the meaning of the Act. The evidence supporting the Board's determination may be summarized as follows:

Both miners and haulers must obtain permits from petitioners before they begin work (R. 414–415). In each permit to a miner, R. A. Blount designates the hauler to whom the miner is to deliver for transportation the tiff dug by him (R. 428B, 430A). Permits to haulers specify the number of miners for whom the hauler is authorized to transport mined tiff (R. 430B).[2] The same individual may on occasion be engaged to perform a dual function as both miner and hauler (R. 430B, 431).[3] Permission to work at mining

[2] The permit in each instance is in the following form, the assigned work being entered in the appropriate space (R. 428B, 430B):

Date _____

This permit authorizes_____ to [mine on; haul from; haul and mine on (as the case may be)] property under control of R. A. Blount. Ore to be clean and dry when delivered to scales.

NO ORE SOLD WITHOUT PERMIT

Hauler _____

Miner _____

(Signed) R. A. BLOUNT.

[3] Petitioners have the right to control the allocation of haulers to particular miners (R. 34–35, 124–126, 130, 138–139).

or hauling carries with it a privilege to erect a shelter upon petitioners' property without payment of ground rental (R. 414). At the time of the hearing there were approximately 35 or 40 families on the Paw Paw Patch residing in shelters built by the workers or their predecessors (R. 33–34).

The permits issued to miners and haulers contemplate, and both miners and haulers are engaged in, a continuing relationship with petitioners, which is delimited neither by the completion of any specific task nor by the extraction or transportation of any specific quantity of barite.[4] Petitioners have, however, summarily cancelled mining and hauling permits (R. 56–59, 428, 429, 430B, 431; see *infra*, p. 8).

The work of both miners and haulers is unskilled (R. 73, 140, 230). All the tiff mined upon petitioners' property is extracted by hand methods (R. 413). A shallow shaft is generally

[4] The work record of the following miners and haulers is shown by their testimony:

Name	Classification	Date of commencement of work for petitioners	Record reference
Willis Emily	Hauler	1937	122
George Bourbon	Miner	1931 or 1932	137
Dan McGee	Miner and hauler	1926	200
Floyd Brown	Miner	1934 or 1935	221
Harry Stroup	Miner	1936	238
Curtis Colter	Miner	1935	243
Jake Colter	Miner	1935	254
Ernest DeClue	Miner	1934	263
Fred Courtway	Miner	1922	278
Ed Howard	Miner	1932	297
Walter Brolyer	Miner	1934	303
Adam Govero	Hauler	1930	307
Sam Givens	Miner and hauler	1933	319
Francis Valle	Miner	1935	323
Tom Smith	Miner	1932	326

dug by the miner and the ore thrown to the surface by hand; in rare instances deep shafts are dug and a bucket and hand windlass are employed to raise the tiff from the excavation (*id.*). The tiff is then rendered marketable, for unless it is clean and dry it is rejected by the purchaser (R. 40, 333–334; *supra,* p. 4 n. 2). When a load is accumulated the miner notifies the hauler assigned to him (R. 227), and the hauler carries the load by his truck to those, situated at a considerable distance from the property (R. 48, 129, 412–413), who have arranged with petitioners for purchase of the Patch's production (R. 139, 164–165).[5] Purchasers of petitioners' tiff will not accept delivery without the presentation of the permits issued by petitioners authorizing mining and hauling (*supra,* p. 4 n. 2; R. 209).

After delivery, miners and haulers receive, as pay for their labors in excavating and transporting the tiff, a share in the proceeds of the sale; petitioners retain the remainder of the sale price as royalty (R. 38–39, 412). Average earnings of miners are approximately $6 per week (R. 141–143, 229–230, 247–248, 258–259).

---

[5] The mining of tiff as above described is performed by approximately 2,000 miners upon various tracts of land in Washington County which produces approximately 25 percent of the national barite output (R. 33). The work pattern involved here is characteristic of the industry in general. See *Woodruff* v. *Superior Mineral Co.*, 230 Mo. App. 616, 70 S. W. (2d) 1104, certiorari quashed, 337 Mo. 718, 85 S. W. (2d) 743. The problems common to the workers in the industry in Washington County resulted in a strike in 1935 (R. 47, 346).

The tiff is purchased either by petitioner R. A. Blount, who conducts his purchasing operations as jobber apart from his functions as coproducer of barite with his cotenants and as manager in charge of the operation of the Patch (R. 412), or by other buyers with whom petitioners enter into arrangements (R. 43, 46–47, 139, 164–165, 257–258, 343). Buyers deal directly with petitioners who exercise full control over the marketing of the tiff (*id.*). Blount in 1939 purchased approximately 80% of the Patch's production (R. 412).

Following the settlement of a strike in 1935 (*supra*, p. 6 n. 5) and until June 1939 when all purchases of tiff from the Patch ceased temporarily (R. 37–38, 68, 72), the miners received the uniform return of $4.50 per ton of tiff despite variations in the gross price, the difference being reflected only in varying haulage and royalty payments (R. 38, 39, 44, 47, 61, 278, 320–321, 338, 339).[6] On June 24, 1939, petitioner R. A. Blount, at that time the sole remaining outlet for petitioners' tiff, temporarily ceased purchasing (R. 37, 72) and on July 15, 1939, petitioners caused the following notice to be circulated among the miners and haulers (R. 60–61, 428):

[6] In those instances when petitioner R. A. Blount purchased the tiff mined on petitioners' land, the other petitioners received approximately 30 cents less per ton royalty than when some other purchased. Twenty-five cents per ton of this difference accrued to Blount as "loading" charge and "selling profit," items which were not deducted by other purchasers (R. 38–39, 44, 47).

Effective on and after August 15, 1939, our price on Barytes mined and hauled from property in Richwoods district will be as follows:

Mining, $3.90 per ton (2,000)#.

Hauling, $1.40 per ton (2,000)#.

Please notify all miners you haul for of this change.

Clean dry ore.

(s) R. A. BLOUNT,
Agent.

In protest against this reduction in return to the miners and haulers for their labor, the workers of the Patch struck (R. 25, 70). During the pendency of this dispute in the fall of 1939, petitioners posted a notice prohibiting further mining or prospecting in the Patch (R. 50, 70), sent notices cancelling existing permits (R. 56–59, 428–429, 431), and took steps to clear the land of miners and haulers (R. 65, 67, 74–75, 77, 78–80, 81, 83, 431–443).

After picketing ceased, petitioners, in the fall of 1939, arranged for the sale of the tiff which had theretofore been mined on the Patch before operations ceased but which had not been sold (R. 37–38, 46). The purchaser dealt directly with R. A. Blount, who, as agent for the other petitioners, arranged for the sale, sent appropriate instructions to the miners and haulers, and paid them their share of the purchase price (R. 38, 45–47). The gross price received by petitioners for this shipment of tiff was $6 per ton and the

net compensation of the miners and haulers per ton delivered was that which had been established by petitioners' notice of July 15, 1939, $3.90 and $1.40 per ton, respectively (*supra,* p. 8, R. 38).

Following this transaction petitioner R. A. Blount, in January 1940, again began purchasing tiff and thereafter was the sole buyer of tiff produced on petitioners' property, petitioners paying the miners and haulers in accordance with the scale previously established by them (R. 45, 51).

ARGUMENT

1. The only question presented by the petition, whether the Board and the court below properly held that the relationship between petitioners and their miners and haulers comes within the Act, turns upon its own facts and is not of general importance in the administration of the Act.

More than half of the tiff industry of the United States is concentrated in Missouri and from 50 to 90 percent of the tiff produced in Missouri comes from the county in which petitioners' lands are located (R. 32–33). Petitioners point to a Missouri statute of 1877 enacted to deal with relationships of land owner and ore prospector as the sole source of all rights and duties arising out of their relationship (Pet. 5, 16–22). As petitioners state, this statute by its terms accords to any miner who comes upon the land without an agreement with the land owner which has been posted as a notice, the right to continue mining for a term of 3 years provided he does not discontinue mining for as

long as 10 consecutive days, excluding Sundays, in any calendar month (Pet. 5). However, because title to the mined ore is in petitioners who control the price and marketing structure, petitioners can in effect discharge the miners and haulers at will by denying them a market (R. 37, 43–44, 46–47, 50–51, 60–61, 72, 164–165, 257–258, 343, 431–443) and thus render academic any rights conferred by the Missouri statute. This is particularly true in view of the extremely primitive conditions under which the miners and haulers work and live, with its accompanying poverty (R. 141–143, 229–230, 247–249, 258–259, 413).

Because of the combination of these unique features, this case presents no problem of probable recurrence.

2. In any event, the decision of the court below is correct, presents no conflict, and is in accord with general principles enunciated by this and other courts.

Petitioners contend that the miners and haulers are not "employees" within the meaning of the Act because they are subject to control only with respect to the result of their services and not with respect to the time and manner of their performance of the services rendered (Pet. 3, 6, 8, 9, 13). In thus selecting from among conflicting common law descriptions of the master and servant relationship that test which most narrowly construes the relationship, petitioners ignore principles, established by this Court, that the application of

federal policy to a particular field cannot be made to turn upon concepts borrowed from other fields or from legislation passed for other purposes but rather that Congressional intent as to the scope of coverage must be sought in the distinctive aims of the legislation under consideration. *Cf. United States* v. *American Trucking Assns.*, 310 U. S. 534, 545; *South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251, 256–258; *Warner* v. *Goltra*, 293 U. S .155, 158; *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50; *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 218–219.[7]

A concept borrowed from the common law supplies no guidance in charting the scope of the employment relationship under the Act since the Act is concerned, not with the liability of a master for injury caused by a servant to a third party nor with

[7] In the following cases persons allegedly working as lessees or independent contractors in extractive industries have been held encompassed by social legislation enacted for the protection of employees. *Lehigh Valley Coal Co.* v. *Yensavage*, 218 Fed. 547, 552–553 (C. C. A. 2), certiorari denied, 235 U. S. 705; *Woodruff* v. *Superior Mineral Co.*, 230 Mo. App. 616, 70 S. W. (2d) 1104, certiorari quashed, 337 Mo. 718, 85 S. W. (2d) 743; *Bidwell Coal Co.* v. *Davidson*, 187 Iowa 809, 174 N. W. 592; *National Tunnell & Mines Co.* v. *Industrial Commission*, 99 Utah 39, 102 P. (2d) 508; *Combined Metals Reduction Co.* v. *Industrial Commission*, 101 Utah 230, 116 P. (2d) 929; *Martin* v. *Republic Steel Co.*, 226 Ala. 209, 146 So. 276; *Arizona-Hercules Copper Co.* v. *Crenshaw*, 21 Ariz. 15, 184 Pac. 996. Cf. *Oliver Iron Co.* v. *Lord*, 262 U. S. 172, 179–180; *Pottorff* v. *Fidelity Coal Mining Co.*, 86 Kan. 774, 122 Pac. 120.

principles of vicarious liability (*e. g.*, Restatement of the Law of Agency, Ch. 7), but with the risk of industrial disputes in interstate commerce and the protection, not merely of employees, but of "workers" in their rights of self-organization. Section 1 of the Act; cf. *National Labor Relations Board* v. *Carlisle Lumber Co.*, 99 F. (2d) 533, 536–537 (C. C. A. 9); *Consolidated Edison Co.* v. *National Labor Relations Board*, 95 F. (2d) 390, 394 (C. C. A. 2), affirmed on this point, 305 U. S. 197. The right to control or veto the conduct of another at a particular point in time does not, as petitioners contend, limit the reach of the Act. As this Court has held, "We are dealing here not with private rights * * * nor with technical concepts pertinent to an employer's legal responsibility to third persons for acts of his servants." *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 80.[8]

The text of the Act reflects the Congressional intent to use the term "employee" in a broad nontechnical sense.

Thus, Section 2 (3) of the Act defines "employee" as follows:

> The term "employee" shall include any employee, and shall not be limited to the

[8] See also: *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 269; *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 369; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 193–194; *National Labor Relations Board* v. *Colten*, 105 F. (2d) 179, 182–183 (C. C. A. 6); *National Labor Relations Board* v. *Wm. Tehel Bottling Co.*, 129 F. (2d) 250 (C. C. A. 8).

> employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

A purpose to shape this broad employment concept (cf. *Fleming* v. *Palmer,* 123 F. (2d) 749, 762 (C. C. A. 1); *Fleming* v. *Hawkeye Pearl Button Co.,* 113 F. (2d) 52, 56 (C. C. A. 8)) to the contours of the collective bargaining relation and to abandon common law formulations is manifest not only from the specific inclusion of those who are not covered by the common law definition pressed by petitioners, such as strikers and those not the employees of a particular employer (cf. *Phelps Dodge Corp.* v. *National Labor Relations Board,* 313 U. S. 177, 191–192), but also from the exemption of common law employees such as domestic servants and agricultural laborers. *North Whittier Heights Citrus Ass'n* v. *National Labor Relations Board,* 109 F. (2d) 76, 80 (C. C. A. 9), certiorari denied, 310 U. S. 632. The same aim is evident in Section 2 (9) of the Act which defines "labor dispute" to include a controversy concerning the representation, not of employees, but

of "persons" (Appendix, p. 21).[9] The Board has interpreted the broad language of the Act in the light of the Congressional policy expressed in Section 1 of the Act in a series of decisions.[10]

---

[9] Section 13 (C) of the Norris-LaGuardia Act (29 U. S. C. § 113 (c), 47 Stat 73) defines "labor dispute" in identical terms. S. Rep. No. 573, 74th Cong. 1st Sess. p. 7. In *Milk Wagon Drivers' Union* v. *Lake Valley Farm Products, Inc.*, 311 U. S. 91, 98–99, the Court reversed a decision of the Seventh Circuit Court of Appeals which held that no labor dispute existed within the meaning of the Norris-LaGuardia Act because the vendors of milk there involved were "independent contractors * * *. They buy and sell for their own profit and are not salaried workers" (108 F. (2d) 436, 442). Compare *Columbia River Packers Association Inc.* v. *Hinton*, 315 U. S. 143, 147.

[10] For example: *Matter of Metro-Goldwyn-Mayer Studios*, 7 N. L. R. B. 662, 686–690 (professional writers working exclusively for one company); *Matter of Seattle Post-Intelligencer*, 9 N. L. R. B. 1262, 1270–1275 (newspaper distributors exclusively for one company, who own their own truck and hire their own assistants); *Matter of KMOX Broadcasting Station*, 10 N. L. R. B. 479 (free-lance announcers and radio artists); *Matter of Connor Lumber and Land Co.*, 11 N. L. R. B. 776 (lumber workers under sole direction of contract but work on company premises, work functionally coherent with company's business and subject to conditions established by company); *Matter of Interstate Granite Corp.*, 11 N. L. R. B. 1046 (colorable lease of a department of an enterprise); *Matter of Trawler Maris Stella, Inc.*, 12 N. L. R. B. 415 (fishermen paid in proportion to selling price of catch); *Matter of American Scale Co.*, 19 N. L. R. B. 124 (colorable lease); *Matter of Sun Life Insurance Co.*, 15 N. L. R. B. 817 (insurance canvassers); *Matter of Park Floral Co.*, 19 N. L. R. B. 403 (colorable lease of greenhouses; work of growers a stage in and integral part of company's entire business; leases involved not so much the accomplishment of any specified result as a continuing op-

These decisions bring within the coverage of the Act all those who do not serve the general public or a limited portion thereof [11] but are engaged in

eration in close association with whole of company's enterprise); *Matter of Edward F. Reichelt et al.*, 21 N. L. R. B. 263 (colorable lease of fur business); *Matter of Kelly Co.*, 34 N. L. R. B. 325 (two truck owners working exclusively for company held employees, three working for others as well held independent contractors); *Matter of Post-Standard Co.*, 34 N. L. R. B. 226 (newspaper distributors, despite method of payment, functionally related to company's business); *Matter of Twentieth Century-Fox*, 32 N. L. R. B. 717 (artists working on premises exclusively for one company held employees; free-lance artists working for various companies held not employees); *Matter of James E. Stark Co.*, 33 N. L. R. B. 1076 (lumber crew working under contractor at hours and wages fixed by company); *Matter of Deep River Timber Co.*, 37 N. L. R. B. 210 (those working under contractors preparing roadways and hauling logs employees of company in view of interrelation of all operations at logging camp, assumption by company of responsibility for wage payments of both contractors, and past bargaining history); *Matter of John Yasek*, 37 N. L. R. B. 156 (truck owners hauling logs principally for one company); *Matter of Harry Murphy*, 37 N. L. R. B. 487 (owners of single trucks hauling logs, compensated at footage rate; no finding as to owners of more than one truck, since evidence unavailable as to whether such owners are engaged in independently established businesses of trucking and transfer); *Matter of Phelps Dodge Corp.*, 34 N. L. R. B. 846 ("contractor" unloading ore on an equal share carload basis); *Matter of Veta Mines*, 36 N. L. R. B. 288, 292 (sections of mine unprofitable for normal company operation, worked by "leasers" who hired "partners"; both "leasers" and "partners" employees).

[11] The fact that the workers herein involved have on occasion abandoned their work for public relief work or other private employment does not, as petitioners suggest (Pet. 5), convert them into independent enterprisers.

the day-to-day rendition of service for another in the usual course of a business. It is this type of service which generates problems which constitute the subject matter of collective bargaining; the work of such persons is objectively characterized by conditions which give rise to the method of group, rather than individual, bargaining and to the bargaining sanction of the strike. The facts summarized in the Statement (*supra*, pp. 2–9) fall within this employment concept. The tiff industry is characterized by an economic relationship which gives rise to industrial disputes; two such disputes have already occurred, one of which involved the 2,000 workers in the industry in Washington County (*supra*, p. 6, n. 5, p. 8).

Even if local law governed the determination of who is an employee within the meaning of the Act,[12] *Woodruff* v. *Superior Mineral Co.*, 230 Mo. App. 616, 70 S. W. (2d) 1104, certiorari quashed, 337 Mo. 718, 85 S. W. (2d) 743, relied upon by petitioners (Pet. 9, 13, 16, 17, 18, 19), does not collide with the Board's finding of an employment relationship. Petitioners' assertion to the contrary is premised not only upon the assumption that the scope of the Act's coverage is coextensive with the common law of master and

[12] Cf. *D'Oench, Duhme & Co.* v. *Federal Deposit Ins. Corp.*, 315 U. S. 447; *Burk-Waggoner Ass'n* v. *Hopkins*, 269 U. S. 110; *Lyeth* v. *Hoey*, 305 U. S. 188; *Morgan* v. *Commissioner of Internal Revenue*, 309 U. S. 78, 80; *Helvering* v. *Hallock*, 309 U. S. 106, 118; Section 10 (a) of the Act.

servant but also upon an erroneous construction of Missouri mining law. This construction is not supported by the face of the Missouri statutes relied on by petitioners nor by the *Woodruff* case which interprets those statutes. It was not accepted by the circuit court of appeals (R. 546–553) for the circuit which embraces Missouri. It is not, therefore, a question which this Court will review. *Helvering* v. *Stuart,* 317 U. S. 154.

The *Woodruff* case supports the Board's finding of an employment relationship since it holds that workers, such as those involved herein, are not vendors of a commodity,[13] but are employees within the meaning of Section 3308 (a) of the Missouri Workmen's Compensation Act because they are engaged in rendering a service to the operator which is part of the "usual business" of producing tiff.[14]

---

[13] *Columbia River Packers Association, Inc.* v. *Hinton,* 315 U. S. 143, also relied upon by petitioners (Pet. 8, 11, 15), involved a dispute between an association of vendors and a purchaser.

[14] Missouri Workmen's Compensation Act, Section 3308 (a) R. S. Mo. 1929) provides:

"Any person who has work done under contract on or about his premises which is an operation of the usual business which he there carries on shall be deemed an employer and shall be liable under this chapter to such contractor, his subcontractors, and their employes, when injured or killed on or about the premises of the employer while doing work which is in the usual course of his business."

The requirement under this provision that the work done be "an operation of the usual business" of another is a domi-

CONCLUSION

The decision of the court below is correct and presents neither a conflict of decisions nor a question of general importance. The petition should, therefore, be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.

ROBERT B. WATTS,
General Counsel,
ERNEST A. GROSS,
Associate General Counsel,
RUTH WEYAND,
FRANK DONNER,
Attorneys,
National Labor Relations Board.

APRIL 1943.

---

nant element of the employment relationship under the Act. See *supra*, pp. 14–16; compare *Matter of Deep River Timber Co.*, 37 N. L. R. B. 210 with *Cates* v. *Williamson* (Mo. App.), 117 S. W. (2d) 655.